IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 2443 of 1992

M/s. Modi Threads Ltd.
a Company incorporated under the Indian
Companies Act, 1956, having its registered
office at Modinagar (U.P.) and its Branch
office at Anil Chambers, Behind Metro Cinema
Cinema Lane, Bombay-400 020 .. Petitioners.

V/s.

1. The Textile Commissioner,
having his office at New C.G.O.
Building, New Marine Line,
Bombay-400 020

2. The Cotton Textile Export Promotion
Council, having its office at
Engineering Centre, 9, Mathew Road,
Bombay-400 004

3. Union of India .. Respondents.

Mr. Shashipal Shankar for the Petitioners.
Mr. Suresh Kumar with Mr. Y.R. Mishra for the
Respondent Nos. 1 and 3.
Mr. Kevic Setalwad i/b. M/s. Mulla & Mulla for the
Respondent No. 2.

CORAM : S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 06.09.2004.

ORAL JUDGMENT (PER - S. RADHAKRISHNAN, J.):-

1. By this Petition, the Petitioner basically is challenging the order dated 14.8.1992 passed by the Appellate Authority, i.e. the office of the Textile Commissioner dated 14.8.1992, whereby the Petitioner has got only a limited relief to the extent of 5%.

2. Brief facts are that the Petitioners are manufacturers of cotton and synthetic yarn and that they had received an order of 96000 kg. of 100% cotton

thread to be supplied to M/s. Hanro Thread Ltd. and

M/s. Holds Worth & Gibb (Dyers) Ltd., United Kingdom. This order is dated 18.3.1991. As per the aforesaid order, cotton was to be exported during the period July, 1991 to December, 1991. In view thereof, the Petitioners had approached Respondent No. 2. the Cotton Textile Export Promotion Council for the purpose of reservation of quota. In pursuance of the same, Respondent No. 2 had sanctioned the quota in favour of the Petitioners under Quota Certificate dated 14.6.1991, whereby the Petitioners were permitted to export the said cotton between the period July, 1991 to December, 1991. For a proper performance of the said export, the Petitioners also had executed a performance guarantee in favour of the Respondent No. 2 in that behalf, and in case of failure of proper export, the Petitioner was also liable to pay compensation to the Respondent No. 2 Council.

3. The Petitioners appear to have manufactured the specified cotton yarn at it’s factory at Modi Nagar, however, the samples were not approved by the importing parties abroad and there were certain changes. Thereafter the Petitioners appear to have manufactured a lot of 17000 kg. and another lot of 9000 kg. of cotton thread. On 19.9.1991, the Petitioners received a fax message from the buyers from United Kingdom, asking as

to when the goods were being shipped. The Petitioners wrote to the buyers in United Kingdom that the goods

were ready for dispatch by their communication dated 23.9.1991. In pursuance thereof, the Petitioners received a fax from their buyers that they were opening a letter of credit in the name of the Petitioners.

4. It appears that the Government of India had imposed a ban on export of cotton yarn from India to all the countries including the United Kingdom until further orders with effect from 21.9.1991. The said ban was imposed on 23.9.1991. It may be noted here that the aforesaid ban was temporary from 21.1.1991 till 15.10.1991.

5. In view of the aforesaid ban, the Petitioners, appear to have informed it’s purchasers that they will not be able to export the goods and had annexed a copy of circular regarding the said ban.

6. In view of the same, on 26.9.1991, the Petitioners received a fax message from the buyers in United Kingdom that the orders were cancelled and they were directed not to ship any quota of cotton.

7. The learned counsel for the Petitioners Shri Shashipal Shankar pointed out that thereafter the

Petitioners went on making attempts to export the said cotton after the ban was lifted and all their attempts could not result in a successful order being obtained

from any importer from abroad. On 29.11.1991, the Petitioners seems to have surrendered the aforesaid quota to Respondent No. 2 Council. The Petitioners thereafter had approached Respondent No. 2 Council for waiver of penalty of Rs. 4,32,000/- as they were forced to surrender the quota and sought release of the said performance guarantee bond. The Respondents had sought some more information from the Petitioners as to whether such goods were actually produced and in that behalf the Petitioners wrote that the goods were actually produced and they were still lying with them. Ultimately, Appeal Committee of Respondent No. 2 Council after affording an opportunity of personal hearing, passed an order dated 14.8.1992, whereby it reduced the penalty by 5%, thus reducing it from 4,32,000/- to Rs. 4,10,000/-, which order dated 14.8.1992 is impugned in this Petition.

8. The main reason in the said order is that as the ban was only a temporary one from 21.9.1991 to 15.10.1991 and that the Petitioners ought to have exported the said cotton or else should have surrendered the said quota promptly to Respondent No. 2 Council during the ban period, so as to enable the Council to get another

exporter to fulfil the entire export quota. Because of the late surrender on 29.11.1991, the Petitioners can not take advantage of the same and not pay the penalty. In that behalf, the Appellate Committee of the Council

has considered the background under which the Petitioners could not fulfil it's commitment to export, and has used it's discretion and granted 5% relief in the said penalty.

9. The basic issue is if the Petitioners had surrendered the quota immediately upon the ban, possibly the Petitioners could have claimed a total waiver of the said penalty. On the other hand, the Petitioners had proceeded even after the ban was lifted on 15.10.1991, to search for clients for the performance of export obligation and obviously the Petitioners had failed to export and thereafter the Petitioners surrendered the quota only on 29.11.1991, i.e. after almost 6 weeks.

10. The learned counsel appearing on behalf of the Respondent No. 2 Council strongly contended that if the export quota had been surrendered prior to 15.10.1991, the Respondent No. 2 Council could have allotted the said quota to another exporter, so as to enable the Government of India to earn the precious foreign exchange. As the Petitioners had not done so and had continued to find buyers till 29.11.1991, the action of

Respondent No. 2 Council cannot be faulted. The learned counsel for the Respondent No. 2 Council also submitted that the Appellate Authority of the Respondent No. 2 Council has considered all the material on record and passed a fair order, whereby the Petitioners had

been granted a relief to the extent of 5% and the said discretion can not be construed as perverse.

11. After having considered all the facts and circumstances in the above case, the Petitioners' submission can not be accepted, as the same is not well founded. As stated hereinabove, had the Petitioners surrendered the quota during the period of ban, then probably the Petitioners could have successfully contended that there was no obligation of paying any penalty, however the Petitioners in the instant case even after the ban was lifted, continued to find some other buyers to fulfil the export obligation and after having failed to do so, at the end of November, 1991, surrendered unilaterally, now can not turn around and say that they are not liable to pay any compensation, which it had originally undertaken by way of a bond. Another important aspect to be noted is that, at the time of admission of the above Petition, interim relief was granted by this Court with a specific condition that the Petitioners to give a bank guarantee in the sum of Rs. 5,00,000/- and that the Petitioners ought to renew

the Bank Guarantee one week before expiry of the Bank guarantee. It appears that the Petitioners had renewed the same from time to time, however, the same had expired in January, 2004 and the Petitioners have failed to renew the same till date.

12. In view of the aforesaid facts and circumstances, we do not find any perversity or illegality in the order dated 14.8.1992, whereby Appellate Authority has fairly exercised it's discretion and granted a relief to the extent of 5%. The said order can not be faulted with, hence Rule stands discharged, however, we direct the Petitioners to pay to the Respondent No. 2 a sum of Rs. 4,10,000/- (Rs. Four Lakh Ten Thousand Only) within a period of 8 weeks from today.

(S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)